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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF ARIZONA**

8 Mark Campbell, )  
9 Plaintiff, ) CR 04-78 TUC DCB  
10 v. )  
11 J. Chaves, et al., ) **ORDER**  
12 Defendant. )  
13

14 On November 29, 2005, this Court denied Defendants Hunt and Hardesty summary  
15 judgment. On December 27, 2005, the Defendants filed a Motion for Reconsideration  
16 reasserting they had no involvement in the affairs forming the basis of Plaintiff's Bivens  
17 action. Defendants argue that Co-Defendant GEO Group's payment to the Plaintiff in  
18 October 4, 2005 represents payment for the loss of property and associated costs. (Motion  
19 to Reconsider, Ex. A: Scroggin Affidavit at 2.)

20 The Court was aware of GEO Group's payment to Plaintiff for the lost property at  
21 the time it ruled against Defendants Hunt and Hardesty. (See Order filed November 29, 2005  
22 at 12.) Defendants' Motion for Reconsideration ignores Plaintiff's claims that they either  
23 failed to have policies and procedures, or failed to follow policies and procedures, for  
24 resolving losses of property by inmates being transferred from one facility to another, when  
one facility is a private contract facility. *Id.* at 6-9, 12.

25 At the outset, the Court notes that motions to reconsider are appropriate only in rare  
26 circumstances:

27 The motion to reconsider would be appropriate where, for example, the court  
28 has patently misunderstood a party, or has made a decision outside the  
adversarial issues presented to the court by the parties, or has made an error

1 not of reasoning but of apprehension. A further basis for a motion to  
 2 reconsider would be a controlling or significant change in the law or facts  
 3 since the submission of the issue to the court. Such problems rarely arise and  
 4 the motion to reconsider should be equally rare.

5 *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983); *see*  
 6 *also, Sullivan v. Faras-RLS Group, Ltd.*, 795 F. Supp. 305, 308-09 (D. Ariz. 1992).

7 "The purpose of a motion for reconsideration is to correct manifest errors of law or  
 8 fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909  
 9 (3rd Cir. 1985), *cert. denied*, 476 U.S. 1171 (1986).

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 21 fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909  
 22 (3d Cir. 1985), *cert. denied*, 476 U.S. 1171 (1986). A motion for reconsideration should not  
 23 be used to ask a court "to rethink what the court had already thought through--rightly or  
 24 wrongly". *Above the Belt, Inc.*, 99 F.R.D. at 101; *See Refrigeration Sales Co. v. Mitchell-*  
*Jackson, Inc.*, 605 F. Supp. 6, 7 (N.D. Ill. 1983). Arguments that a court was in error on the  
 25 issues it considered should be directed to the court of appeals. *Id.* at 7.

26 Motions to reconsider are generally treated as motions to alter or amend the  
 27 judgment under Federal Rules of Civil Procedure ("Rule") 59(e). *See In re Agric. Research*  
*& Tech. Group, Inc.*, 916 F.2d 528, 542 (9th Cir. 1990); *MGIC Indem. Corp. v. Weisman*,  
 28 803 F.2d 500, 505 (9th Cir. 1986). A motion to amend a judgment based on arguments that  
 could have been raised, but were not raised, before judgment was entered may not properly

1 be granted. 11 Wright, Miller & Kane, Federal Practice and Procedure: Civil 2<sup>nd</sup> § 2810.1  
2 at 127-28; *Demasse v. ITT Corporation*, 915 F. Supp. 1040, 1048 (Ariz. 1995) (a Rule 59(e)  
3 motion may not be used to raise arguments or present evidence that could have been raised  
4 or presented prior to judgment); *Williams v. Poulos*, 11 F.3d 271, 289 (1<sup>st</sup> Cir. 1993) (proper  
5 to deny Rule 59(e) request for relief not requested in amended complaint).

6 Alternatively, a court can construe a motion to reconsider as a Rule 60 motion for  
7 relief from a judgment or order. Under Rule 60, a party can obtain relief from a court order  
8 for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly  
9 discovered evidence which by due diligence could not have been discovered in time to move  
10 for a new trial under Rule 59(b); (3) fraud; (4) the judgment is void; (5) the judgment has  
11 been satisfied; (6) any other reason justifying relief from the operation of the judgment. Fed.  
12 R. Civ. P. 60(b).

13 The Court has reviewed Defendants' Motion to Reconsider and its Order entered on  
14 November 29, 2005. The facts and circumstances which caused this Court to rule against  
15 Defendants have not changed. The facts and circumstances surrounding Plaintiffs' claims  
16 against Defendants Hardesty and Hunt have not changed since this Court's Order concerning  
17 these matters; there are no new facts which were discovered since the Court's disposition of  
18 the motion for summary judgment. There is no manifest error of law. There is no basis  
19 under Rule 59 or Rule 60 for reconsideration.

20 **Accordingly,**

21 **IT IS ORDERED** that Plaintiffs' Motion for Reconsideration (document 45) is  
22 DENIED.

23 **IT IS FURTHER ORDERED** that within five days of the filing date of this Order  
24 the Defendants shall supplement their status report regarding the progress of Plaintiff's  
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26 //  
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1 administrative claim. It appears that he filed it on December 20, 2005, by mailing a BP9  
2 form to the Warden at Safford FCI.

3 DATED this 11<sup>th</sup> day of January, 2006.

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8 David C. Bury  
9 United States District Judge  
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